megahertz is the input market for spectrum is consistent with our decision to analyze the combined market for mobile telephony.

2. Initial Screen

62. Our competitive analysis consists of an initial screen, followed by a further case-by-case review of the markets identified by that screen. The purpose of this initial screen was to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace. It is designed to be conservative and ensure that we did not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists.[157] In addition to market concentration, we considered the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless carriers to compete effectively.

63. This analysis follows the general structure of the DOJ/FTC Merger Guidelines, and we implemented a screen consistent with the Commission's analysis of recent transactions.[158] A market was identified as requiring further competitive review if the post-transaction HHI would be greater than 2800 and the change in HHI would be 100 or greater; or if the change in HHI would be 250 or greater regardless of the level of the HHI; or if, post-transaction, the Applicants would hold 70 megahertz or more of spectrum.[159] Consistent with the Commission's review of the Cingular-AT&T Wireless transaction, we used data from our Numbering Resource Utilization / Forecast ("NRUF") database to calculate market shares and market concentration for two sets of geographic areas, CEAs and CMAs.[160]

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[157] An initial screen is only the beginning of our competitive analysis. Subsequent sections examine the other factors in a case-by-case analysis of whether there will be potential competitive harms in certain geographic markets if the transaction were to be approved without conditions.

[158] *See Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 107.

[159] We chose initial thresholds of 2800 for the HHI and 100 for the change in HHI because a mobile telephony market that does not exhibit at least this combined post-merger level of concentration will be no more concentrated than at the time the Commission's last congressionally mandated review which concluded the market was effectively competitive. *See Ninth Competition Report*, 19 FCC Rcd at 20600 ¶ 2. Our analysis indicates that the current average HHI in markets across the country has increased to slightly over 3100 as a result of the Cingular-AT&T Wireless merger. Nevertheless, we have maintained an HHI score of 2800 as the trigger for the initial screen. A slightly more rigorous review is consistent with the analytical purpose of the initial screen – to eliminate from review markets where there is no competitive harm rather than identifying markets where competitive harm may exist. Although applying a criterion of 250 or greater resulted in the review of markets in which the concentration levels are below that of the average market today, we chose to apply this criterion to be confident that we fully evaluated any market in which the merger may adversely affect competition.

[160] *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21564 ¶ 104. CEAs, which are defined by the Bureau of Economic Analysis, are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 States and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties which are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. *See* Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY. OF CURRENT BUSINESS., February 1995, at 75-81. In November 2004, the Bureau of Economic Analysis updated definitions for CEAs. *See* Kenneth P. Johnson and John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURVEY. OF CURRENT BUSINESS., November 2004, at 68-71. Although the total number of CEAs decreased from 348 to 344, we did not adopt the new CEA definitions for purposes of this transaction and relied on the 348 previously defined CEAs. CMAs are the regions originally used by the Commission in issuing licenses for cellular service. There are 734 CMAs, made up of 305 Metropolitan Statistical Areas ("MSAs"), 428 Rural Service Areas ("RSAs"), and a market for the Gulf of Mexico. *See Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87. (continued....)

We also use the NRUF data, in conjunction with billing data submitted by a number of carriers,[161] to undertake our in-depth, market-by-market analysis of the areas identified for further review by the initial screens. We identified 124 CEAs and 190 CMAs for further, case-by-case analysis.[162]

64. By comparing the results of these two applications of the initial HHI threshold and analyzing any market identified by either application, we ensure that we do not overlook any local area that required a closer case-by-case analysis. Although the structure of some markets not identified for additional analysis will change as a result of the transaction, we believe that these structural changes are negligible. Therefore, we find that these structural changes will not alter carrier conduct in such a way as to impair competition and hence market performance. In our judgment, we find that these markets need no further review given the lack of potential for competitive harm as a result of this merger.

65. In addition to an examination of post-merger HHI and change in HHI, our initial screen included an analysis of the post-merger spectrum holdings of the combined firm in all local markets. This review identified any market where the Applicants hold 70 megahertz, or more, of spectrum in all portions of the market. Seventy megahertz of spectrum represents a little more than one-third of the total bandwidth available for mobile telephony today, leaving approximately 130 megahertz of spectrum available for use by other carriers in a local market. Our market-by-market analysis in this proceeding, as well as evidence from the mobile telephony markets across the country, indicates that 130 megahertz of spectrum is sufficient to support at least three viable competitors.[163] Consistent with the conservative approach embodied in our analysis, we subjected any market in which only one entity controls more than one-third of the available spectrum to further review. We found that there were no areas where, post-transaction, the Applicants would hold 70 megahertz or more of spectrum.

66. The Applicants suggest that the Commission should evaluate the Sprint Nextel merger with more permissive structural screens than were used in the Cingular-AT&T Wireless transaction. They indicate that the HHI levels in screens used in the Cingular-AT&T Wireless transaction likely overstate the number of markets that deserve closer analysis in this case.[164] The Applicants argue that adjustments should be made because Nextel is not an Incumbent Local Exchange Carrier ("ILEC") and the Sprint ILECs account for fewer than 5 percent of all switched access lines. Also, they state that Sprint Nextel will generally have lower spectrum holdings than did Cingular-AT&T Wireless. Finally, the Applicants believe that the Sprint Nextel merger creates larger and more credible efficiency benefits than

(Continued from previous page)
RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. *See Ninth Competition Report*, 19 FCC Rcd at 20632 ¶ 87.

[161] Billing data was submitted by Cingular, Nextel, T-Mobile, Sprint, Verizon Wireless, ALLTEL, Western Wireless, and Southern Linc Wireless in response to a staff data request. *See*, *supra*, at Section II.C.1. These data include information on all service plans for which the carrier currently has subscribers, including the number of subscribers taking a particular plan, broken down by county. From this data set, we calculate the number of subscribers per county for each carrier. This data set also can be aggregated up to larger geographic areas and can be used to calculate market shares for all mobile wireless carriers. Using two sets of data to cross-check against each other gives us confidence that any shortcomings in either data set will not lead to inappropriate analytical conclusions.

[162] The CEAs and CMAs are listed in Appendix B.

[163] With 130 megahertz of spectrum available to other carriers, there could, for instance, be as many as four carriers with at least 30 megahertz of spectrum for the provision of mobile telephony services. Many carriers are competing successfully with far less bandwidth today. *See, e.g.*, *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 & nn.334-35 (discussing services of Verizon Wireless and Dobson)

[164] *See* Application, Public Interest Statement at 73-74.

did the Cingular-AT&T Wireless transaction.[165]

67. We disagree. While we believe that the factors addressed by the Applicants play an important role in our competitive analysis of the Sprint Nextel merger, we believe that it is appropriate to examine these factors in the context of our case-by-case review. Implementing a more permissive initial screen could result in the exclusion of markets from further scrutiny for which risk of adverse competitive effects exists. We emphasize that our initial identification of markets only constitutes the beginning of the competitive analysis. It is designed to ensure that we do not exclude any geographic areas for which there is some risk of anticompetitive effects.

3. Coordinated Interaction

68. In this section, we examine the potential of the merger of Sprint and Nextel to facilitate anticompetitive coordinated effects by examining the impact of the merger on the same set of factors identified in our analysis of coordinated effects in the Cingular-AT&T Wireless merger. As discussed below, we find that the merger of Sprint and Nextel will not make coordinated interaction among carriers more likely, successful, or complete. We base this finding on our analysis of conditions that are common across, or that typically prevail in, local U.S. markets, and Applicants' analysis of subscriber absorption capacity.

69. In general, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.[166] Accordingly, a merger may create or enhance market power or facilitate its exercise by making coordinated interaction among firms more likely, more successful, or more complete.[167] Successful coordination depends critically on two key factors. The first is the ability of the firms to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction. Rapid detection and punishment of deviations facilitates successful coordinated interaction by lowering the profitability of deviating from the terms of coordination and thereby reducing the incentives to cheat. Terms of coordination need not perfectly achieve a monopoly outcome in order to harm consumers, however. Further, terms of coordination may omit some market participants or dimensions of competition and still result in competitive harm.[168]

70. In the *Cingular-AT&T Wireless Order*, we identified a number of factors that may determine whether market conditions are conducive to reaching and enforcing terms of coordination, including the number of firms, transparency of information, firm and product homogeneity, and the presence of mavericks.[169] Based on an analysis of these and other factors, Applicants argue that the proposed transaction poses no significant risk of anticompetitive coordinated effects.[170] Applicants also use a subscriber absorption capacity analysis to evaluate the potential for successful coordination between the two leading firms in a market.[171] None of the commenters specifically addressed the potential of the

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[165] CRA Analysis at 24-25.

[166] *DOJ/FTC Merger Guidelines* § 0.1.

[167] *Id.* § 2.1. The *DOJ/FTC Merger Guidelines* define coordinated interaction as comprising actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than by attempting to undercut them. *Id.*

[168] *Id.* at § 2.11.

[169] *Cingular-AT&T* Wireless *Order*, 19 FCC Rcd at 21580-21586 ¶¶ 150-164.

[170] Application, Public Interest Statement at 80-83; CRA Analysis at 47-51 ¶¶ 127-140.

[171] Application, Public Interest Statement at 83-86; CRA Analysis at 51-56 ¶¶ 141-151.

merger to facilitate coordinated effects.

71. *Number of Firms*. In the *Cingular-AT&T Wireless Order*, we noted that a merger may lower the difficulties and costs of reaching and enforcing the terms of an agreement to restrict output and raise price above competitive levels by reducing the number of firms necessary to control a given percentage of total supply.[172] As discussed below, however, we find that although a reduction in the number of national competitors by one may provide the remaining carriers with an increased ability and incentive to reach and enforce a coordinated strategy, it is not by itself a sufficient basis for concluding that it will do so with respect to this particular transaction.

72. The merger of Sprint and Nextel will reduce the number of national competitors from five to four, and in some geographic markets there will be fewer than four national competitors as a result of the merger. The Applicants stress that there will still be four national competitors in most large markets and in many smaller markets, and that there will also be a number of regional competitors as well.[173] The Applicants further note that the Commission stressed in the *Cingular-AT&T Merger Order* that a reduction in the number of competitors and an increase in concentration are not by themselves a sufficient basis for concluding that anticompetitive coordinated effects are likely.[174] We still maintain that a reduction in the number of national carriers by one is not enough, by itself, to make a determination of the likelihood of anticompetitive effects with respect to this particular transaction. However, because the elimination of a national competitor as a result of the merger may provide the remaining carriers with an increased ability and incentive to reach and enforce a coordinated strategy, we have carefully analyzed the other factors that may facilitate coordinated interaction.

73. *Transparency of Information*. Terms of coordination are often easier to reach, and detection and punishment of deviations is often more rapid and more effective, when key information about specific transactions or individual price or output levels is routinely available to rival firms.[175] In this regard, we find that the merger has the potential to increase transparency of information by reducing the number and complexity of offerings, but it is not clear that it will provide the remaining carriers with an increased ability to reach terms of coordination or to detect and punish deviations from a coordinated strategy.

74. U.S. mobile telephony carriers make available a great deal of information about their offerings. Prices and other terms and conditions of service for residential customers are published on carriers' websites, among other places. As the Commission has noted, and as the Applicants have documented in the record for this transaction, carriers routinely monitor their rivals' pricing plans and promotions and use such information to design and modify their own pricing plans and service offerings.[176] While acknowledging such monitoring, the Applicants argue that reaching and enforcing an agreement may be complicated by the number and complexity of pricing plans for residential customers.[177] Although the elimination of another national competitor may reduce the number and complexity of offerings in the marketplace, it is not clear that this transaction would provide the remaining firms with a significantly increased ability to reach terms of coordination or to rapidly detect and punish any deviations from a coordinated strategy.

[172] *Cingular-AT&T* Wireless *Order*, 19 FCC Rcd at 21580 ¶ 150.

[173] CRA Analysis at 48 ¶ 131.

[174] *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶150.

[175] *DOJ/FTC Merger Guidelines* § 2.11-2.12.

[176] *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581 ¶154; **[REDACTED]**

[177] CRA Analysis at 49 ¶ 133.

75. *Firm and Product Homogeneity.* Another market condition that may facilitate the ability to reach terms of coordination is firm and product homogeneity.[178] As discussed below, we find that the merger may narrow asymmetries among the remaining nationwide carriers, but that the significant variation in the market shares and relative positions of the nationwide carriers across local geographic markets will continue to provide an effective constraint on coordinated interaction.

76. Applicants argue that significant asymmetries will remain after the merger of Sprint and Nextel, including product differentiation and the differences in incentives due to the ILEC affiliations of Verizon Wireless and Cingular.[179] According to the Applicants, these differences in firm characteristics are obstacles to any post-merger effort to coordinate pricing. We agree with Applicants that differences resulting from ILEC affiliations by other national wireless carriers may tend generally to inhibit coordination in that the merged entity will face different incentives as an independent wireless carrier than the ILEC-affiliated Verizon Wireless or Cingular. Nevertheless, the extent to which any such difference in incentives will be a sufficient constraint on coordinated interaction is not clear with respect to markets where the merged entity and either Verizon Wireless or Cingular control a share of subscribers that is large enough to make a higher coordinated price profitable to both the merged entity and the ILEC-affiliated carrier.

77. Moreover, the merger of Sprint and Nextel has the potential to facilitate anticompetitive coordinated effects by further narrowing asymmetries among the national carriers. The merger will create a carrier that is more similar in size and market share to Cingular and Verizon Wireless. Since mobile operators with large customer bases may be better able to exploit scale economies and thereby benefit from declining average costs, the merged carrier may enjoy lower average costs which are more closely in line with those facing Cingular and Verizon Wireless. In addition, Sprint already shares the CDMA technology and a focus on wireless data in common with Verizon Wireless, and the acquisition of Nextel's business-oriented customer base may result in a customer mix that is more similar to that of Verizon.

78. On the other hand, it is not clear that this transaction would increase firm homogeneity in such a way as to provide the remaining firms with a significantly increased ability to reach terms of coordination. In addition, the national carriers have different market shares in different geographic areas, explained in part by where they were one of the two original cellular carriers. Thus, for example, Verizon is stronger in the Northeast and Cingular in the South and Midwest. Post-merger, Sprint Nextel would have the largest number of subscribers in some areas, and would be a distant third in others. In some markets, all four national carriers would be present, in others only two. We conclude that this variation in presence, market share and relative positions of the national carriers would make it more difficult for those carriers to reach terms of coordination.

79. *Presence of Mavericks.* In some circumstances, maverick firms can effectively prevent or limit coordinated interaction.[180] Maverick firms are firms that have a greater economic incentive to deviate from the terms of coordination than do most of their rivals. Therefore, a merger may make coordinated interaction more likely, more successful, or more complete if it involves the acquisition of a maverick firm. As discussed below, we find that although the merger does not involve the acquisition of a unique maverick, it may result in the creation of a carrier which has less incentive to deviate from the terms of coordination than either Sprint or Nextel do as independent carriers.

80. Citing the Commission's analysis of mavericks in the context of the Cingular-AT&T

[178] *DOJ/FTC Merger Guidelines* § 2.11.

[179] CRA Analysis at 49 ¶ 134.

[180] *DOJ/FTC Merger Guidelines* § 2.12.

Wireless merger, Applicants argue that regional carriers and also other nationwide carriers would remain potential mavericks after the merger of Sprint and Nextel, and conclude that the transaction does not involve the acquisition of a unique maverick.[181] We concur that this transaction will not result in the loss of a unique maverick carrier. However, as the Commission has indicated, a relatively small carrier that controls substantially more spectrum than it needs to serve the demands of its currently limited customer base may have a greater incentive to deviate than carriers with larger market shares.[182] This is because the small carrier receives less total benefit from the higher coordinated prices than do carriers with larger market shares and because the small carrier is also well positioned to profit from expanding its sales. The record shows that both Sprint and Nextel claim to have been the first carrier to introduce a number of innovative wireless service offerings and pricing plans, suggesting that each carrier may be considered a potential maverick absent the merger.[183] By combining two smaller carriers into a single carrier with a larger market share, the merger of Sprint and Nextel may result in the creation of a carrier which has less incentive to deviate from the terms of coordination than either Sprint or Nextel do as independent carriers.

81. *Technology Development.* One factor that could undermine the incentives to coordinate is technological innovation, particularly to the extent that it favors one carrier, or a subset of carriers, for a period of time. As discussed below, we find that carriers' deployment of different wireless network technologies will help make the process of technological development and innovation an effective constraint on coordinated interaction in the U.S. wireless telephony market.

82. Applicants contend that successful coordinated action is less likely because of the dynamic nature of the wireless telephony market.[184] For example, Applicants cite carriers' deployment of next-generation network technologies and the uncertain consumer demand for services provided over these networks, and the lumpiness of investments in wireless markets.[185] Applicants also argue that differences in the positioning of carriers on their technology paths will remain substantial following the merger and will continue to complicate pricing agreement and enforcement.[186] We agree that technological innovation in the market for wireless services will contribute to difficulties in maintaining a coordinated outcome among firms in the market. As explained below, however, the principal reason is the lack of technological standardization in U.S. wireless markets, rather than the process of technological innovation in itself. Evidence from international experience suggests that technological innovation may not be a very effective constraint on coordinated interaction when competing carriers use the same technology.[187]

83. We believe that U.S. carriers' use of different wireless standards will tend to undermine the incentive and ability to coordinate for several reasons. Since the types of services offered tend to differ across technologies, the use of multiple standards tends to result in greater product variety and,

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[181] *See* CRA Analysis at 50 ¶ 137.

[182] Cingular-*AT&T Wireless Order*, 19 FCC Rcd at 21584 ¶160.

[183] **[REDACTED]**

[184] Application, Public Interest Statement at 82; CRA Analysis at 49 ¶ 135.

[185] CRA Analysis at 49-50 ¶ 135.

[186] CRA Analysis at 49 ¶ 135.

[187] Simon Flannery *et. al.*, *3G Economics a Cause for Concern*, Morgan Stanley, Equity Research, Feb. 1, 2005, at 11 ("*3G Economics a Cause for Concern*"); *Market Analysis – Wholesale Mobile Access and Call Origination*, Document No. 04/118 and 04/118a, Response to Consultation & Notification to European Commission, Commission for Communications Regulation, Dec. 9, 2004, at 44-45 ("*ComReg Document No. 04/118*").

accordingly, greater differentiation of services offered by carriers using different technologies.[188] Diversified and heterogeneous services make it more difficult for competitors to reach terms of coordination. Other potential advantages of multiple technologies include greater technological competition and greater price competition between operators using competing standards.[189] In particular, competition among carriers using competing incompatible technologies tends to put pressure on carriers to achieve sufficiently high adoption of their technology in order to ensure it survives the "standards war."[190] The pressure to fill their networks may lead carriers to enact price cuts and handset subsidies.[191] Moreover, the adoption of a particular standard may enable one or a subset of carriers to gain a temporary competitive edge, which in turn will tend to undermine incentives to coordinate and have a disruptive effect on the ability to reach and enforce terms of coordination. In this regard, we note that CDMA carriers migrating to CDMA2000 1xRTT and 1xEV-DO may gain a temporary competitive advantage because the backward compatibility of more advanced technologies on the CDMA2000 migration path permits handover from 3G to 2G, whereas GSM/TDMA carriers migrating to W-CDMA may be temporarily handicapped by the lack of handover from 3G to 2G.[192]

84. *Response of rivals*. The likelihood of successful collusion between the two or three leading carriers in a market depends on how smaller rivals respond. As discussed below, we find that competitive pressure from smaller rivals will generally provide an effective constraint on attempts at coordinated interaction by a coalition of market leaders in those markets which have the potential to be dominated by two or three larger carriers of roughly equal size.

85. International experience suggests that a reduction in the number of national mobile operators from five to four may tend to facilitate coordinated interaction when the two leading carriers have a large share of the market, with roughly symmetrical individual market shares so that their incentives are aligned, and the remaining smaller carriers are not an effective constraint on coordination between the two market leaders.[193] However, in a significant portion of the geographic markets identified in the initial screen, the merged entity will not be one of the two leading carriers, and therefore the subscriber share of the two market leaders will not increase as a result of the merger. With respect to most of the geographic markets in which the merged entity would be one of the two leading carriers after the merger, we find that the combined market share of the two leading carriers would not be large enough, or their individual market shares not sufficiently symmetrical, to be conducive to successful coordinated interaction. In the relatively small number of markets where the combined market share of the top two carriers and the relative symmetry of their individual market shares might otherwise raise concerns about coordinated effects, our analysis of the presence and capacity of the remaining smaller carriers leads us to conclude that competitive pressure from the remaining smaller carriers will be an effective constraint on

[188] Neil Gandal, David Salant, and Leonard Waverman, *Standards in Wireless Telephone Networks*, Telecommunications Policy, 2003, at 329 ("*Standards in Wireless Telephone Networks*").

[189] Standards *in Wireless Telephone Networks*, at 330.

[190] *3G Economics a Cause for Concern*, at 11. For a general discussion of standards wars in network industries, with digital wireless technologies cited as a case study, *see* Carl Shapiro & Hal R. Varian, INFORMATION RULES, at 261-296 (Harvard Business School Press 1999) ("*Information Rules*").

[191] *3G Economics a Cause for Concern*, at 10-11; *Information Rules*, at 273.

[192] *Standards in Wireless Telephone Networks*, at 328; Frank J. Governali, *et al.*, *Wireless Data Prospects Brightening*, Goldman Sachs, Global Investment Research, Apr. 16, 2004, at 6.

[193] Terence Sinclair, *et al.*, *European Mobile (2) – Swimming with the Sharks: Competitor Review*, Schroeder Salomon Smith Barney, Equity Research: Europe, Sept. 10, 2002, at 10 and 15; Timothy Horan *et al.*, *International Wireless Trends Reinforce Our Bullish View On U.S. Wireless*, CIBC World Markets, Equity Research, June 6, 2005, at 8; *ComReg Document No. 04/118*, at 40-43, 55-59.

any attempt by the two leading carriers to align their conduct so as to raise price above competitive levels. This is because when carriers have relatively small market shares the additional profits earned by gaining market share are more likely to exceed those to be gained by agreeing to a higher price but keeping the current market share. Thus, small carriers with sufficient capacity to expand have less incentive to reach an agreement with the large players and greater incentive to cheat on any agreement reached. In addition, apart from the presence and capacity of smaller rivals, as discussed above we believe that successful coordination is more difficult because of the carriers' use of different technologies.

86. A quantitative analysis submitted by the Applicants suggests support for a view that smaller rivals in a market will generally be able to provide an effective constraint on coordinated actions by the larger carriers.[194] The analysis, which the Applicants refer to as a Subscriber Absorption Capacity analysis ("SAC"), evaluates the potential for successful coordination between the two leading carriers in a market by estimating whether the remaining smaller carriers, who are not part of the assumed coordinating group, have the ability to absorb an output reduction equal to 10 percent of the combined subscribers of the two leading carriers if the latter were to attempt a coordinated price increase.[195] The Applicants applied this test to 61 Telephia markets identified by a structural screen in which the merged entity would be one of the two leading firms.[196] The results indicate that rivals would have sufficient capacity to absorb at least 10 percent of the subscribers of the two leading carriers in all but six of these markets.[197] Based on a closer examination of these six markets, the Applicants further argue that the merger of Sprint and Nextel is unlikely to result in adverse coordinated effects in these markets as well.[198]

87. The merger of Sprint and Nextel may also tend to facilitate coordinated interaction in markets where it results in three roughly equal-sized carriers controlling a large share of subscribers, and competition from the remaining smaller rivals is not an effective constraint on coordination among the top three carriers. However, only a few geographic markets identified in the initial screen meet these structural criteria. Based on a closer examination of the presence and capacity of smaller rivals and the network technologies deployed in these few markets, we conclude that competitive pressure from smaller carriers that are not part of the coordinating group will provide an effective constraint on coordinated interaction in these markets.

88. As noted previously, non-facilities based service options such as MVNOs and resellers have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior. In particular, independent resellers and MVNOs may be able to undercut the market leaders and thereby provide an additional constraint on coordinated interaction in markets which have the potential to be dominated by the two or three largest carriers.

89. *Conclusions.* On balance, we are persuaded that this transaction will not pose a risk of harm from collusive behavior in the local markets caught by the initial screen. While this determination is difficult due to the reduction of national carriers from five to four, we find that three conditions in U.S. wireless markets will generally provide effective constraints on coordinated interaction. First, the significant variation in the market shares and relative position of the nationwide carriers across local geographic markets greatly increases the complexity and difficulty of reaching terms of coordination. Second, the use of competing incompatible wireless standards undermines the ability and incentive to coordinate by promoting greater product heterogeneity and by enabling certain carriers to gain a

[194] CRA Analysis at 51-56 ¶¶ 140-151.

[195] CRA Analysis at 51 ¶ 141.

[196] CRA Analysis at 51-52 ¶ 142.

[197] CRA Analysis at 52 ¶ 144.

[198] CRA Analysis at 53-55 ¶¶ 145-150.

temporary competitive advantage over rivals through the adoption of a particular standard. Third, smaller rivals with sufficient capacity to respond to attempted coordination by the two or three leading carriers in local geographic markets will have a strong incentive not to coordinate their actions with those leading carriers. We have examined the individual geographic markets identified in the initial screen in light of our analysis of these constraints, and based on this analysis we conclude that the merger of Sprint and Nextel is unlikely to alter conditions in these markets in such a way as to make coordinated interaction more likely, more successful, or more complete.

4. Unilateral Effects

90. As discussed below, we find that this merger is unlikely to result in adverse unilateral effects. Although the merger would result in the elimination of a national competitor, four national competitors (Sprint Nextel, T-Mobile, Cingular, and Verizon Wireless) would remain, in addition to several regional carriers, including ALLTEL. In addition, Sprint Nextel would not be the largest competitor post-merger in most markets, and it would have a relatively small market share post-merger. For markets in which these characteristics do not hold, it appears that other firms have the incentive and ability to add subscribers in response to any attempted exercise of market power by the merged firm. In addition, the presence of carriers who hold spectrum but are not currently offering service may further lower the risk of adverse unilateral effects in some cases. The merger is also likely to result in efficiencies that would lead to pressure to reduce prices, further lowering the risk of adverse unilateral effects.

91. Adverse unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing price, suppressing output, or decreasing the quality of its service.[199] Our finding that this merger likely will not lead to adverse unilateral effects is based mainly upon an analysis of market share, substitutability between Sprint and Nextel, competitor repositioning and expansion, and efficiencies. We discuss each of these factors below.

a. Market Shares

92. The presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a large market share by the merged entity, may increase the likelihood of adverse unilateral effects.[200] However, a large combined market share alone is not sufficient to conclude that adverse unilateral effects are likely. When a merged firm would hold a large, post-transaction market share, it is necessary to evaluate the number of competitors and potential entrants who are close substitutes for the merging parties in order to determine the likelihood of competitive harm.

93. The Applicants argue that the greatest risk of adverse unilateral effects arises if, in a particular market, the merged firm becomes the leading firm by a large margin.[201] They also claim that this is not the case for most local markets, and that Sprint Nextel would have a market share greater than

[199] *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115. The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions may alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. In the mobile telephony industry, changes in behavior may include delays in service quality improvements or adverse adjustments to plan features without corresponding decreases in plan prices.

[200] *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-571 ¶ 117.

[201] CRA Analysis at 32-33 ¶ 85.

50 percent in only one market, Brownsville, Texas [REDACTED].[202] We agree that post-transaction, Sprint Nextel will not be the largest firm in most markets, and will generally have a relatively low market share. Although we generally agree with the Applicants that the risk of adverse unilateral effects increases when the merged firm becomes the leading firm in a particular market by a large margin, the potential for adverse unilateral effects also exists in markets where the merged firm has a market share less than 50 percent or is not the leading firm in the market. Therefore, our analysis of unilateral effects incorporates the other factors described below.

b. Product Differentiation and Substitutability

94. As explained below, we assess the degree of substitutability between Sprint's and Nextel's mobile telephony services, and the effect that this has on the risk of adverse unilateral effects. On balance, we find there are several mobile telephony carriers that provide services that consumers view as good substitutes for Sprint's and Nextel's offerings. Therefore, although we find that some consumers may view Sprint and Nextel to be good substitutes, the availability of several equally attractive options significantly reduces the risk of adverse unilateral effects.[203] We also assess the substitutability of Sprint's and Nextel's PTT offerings and find that they are not close substitutes. In addition, several firms currently offer PTT services, and additional firms are likely to offer this service in the future, suggesting there is little risk of adverse unilateral harm to customers interested in PTT.

95. We found in the *Cingular-AT&T Wireless Order* that the market for mobile telephony service in the United States appears to be differentiated.[204] Wireless service carriers do not offer completely homogeneous services. Rather, carriers compete vigorously on the basis not only of price, but also of other numerous non-price features such as call quality, thoroughness of geographic coverage, and plan features (*e.g.* PTT).[205] While carriers can change some of these attributes relatively quickly, other attributes such as quality and coverage require investments in spectrum and infrastructure and are not easily modified. Generally, our analysis of product differentiation focuses on the characteristics that carriers are unable or unlikely to change quickly, and the potential for anticompetitive harms that may result.

96. In a market characterized by product differentiation, a firm's ability to raise prices is constrained in part by the threat that its customers will shift their purchases to products that are close substitutes. If a firm merges with another firm that produces a close substitute, some of the lost sales and profits that will occur if the first firm raises its prices will be offset by an increase in sales of the close substitute made by the firm with which it has merged.[206] The more a buyer of a particular product considers the newly acquired product to be their next choice, the greater the possible price increase. Therefore, if the services offered by Sprint and Nextel are viewed as close substitutes by significant

202 **[REDACTED]**

203 We note that we do find that Nextel is somewhat differentiated from the other mobile telephony carriers by its PTT service and focus on business customers. But we do not find that Sprint and Nextel are significantly worse substitutes for one another than they are for the other mobile telephony carriers.

204 *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 116.

205 There are several service quality dimensions including the probability of blocked and dropped calls, and the quality of the connection. In addition, customer support is an important dimension of service quality. A carrier's coverage includes locations where the service is available either on the carrier's own network, or on the network of one of its roaming partners. Plan features include various dimensions of subscriber usage such as the number of voice or data minutes provided by the plan Types of usage are typically defined by "buckets" of minutes and are differentiated by the time at which a call is placed, the location from which it is placed, and the destination to which it is directed. *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21572-73 ¶¶ 123-126.

206 *Antitrust Law Developments (Fifth)*, ABA Section of Antitrust Law at 344 (2002).

numbers of customers, the merger of the two firms could remove a constraint on Sprint's and Nextel's ability to raise prices.[207] Alternatively, if most customers consider Sprint and Nextel to be more distant substitutes for each other, or have multiple choices of equally attractive substitutes, then anticompetitive unilateral effects are less likely to occur or may be less significant.

97. The Applicants argue that Sprint and Nextel are not close substitutes, which if true, would suggest that the incentive and ability to unilaterally increase price is reduced.[208] The Applicants claim that Sprint and Nextel focus on different segments of mobile telephony customers – Nextel on the enterprise market and Sprint on the residential market. The record indicates that **[REDACTED]**[209] The Applicants also claim that Nextel offers an enterprise-friendly push-to-talk feature, and that Sprint promotes color screen handsets, picture phones, data use, and elimination of overages which are designed to appeal to non-enterprise customers.

98. We agree with the Applicants that Nextel is more focused on enterprise customers than Sprint. In addition, we find that Nextel is somewhat differentiated from all of the other national mobile telephony carriers because its service is more heavily oriented towards enterprise customers than the other firms[210] and because it dominates the corporate liable segment.[211] However, recently Nextel has increased its appeal to the non-enterprise segment of the mobile telephony market. In May 2003, Nextel acquired sixty-six percent of Boost Mobile, which has been successfully marketing its prepaid service to the consumer market (especially to the youth demographic).[212]

99. Although we agree with the Applicants that Sprint and Nextel generally do not share a common customer focus, the evidence in the record indicates that there are some product dimensions and customer groups for which Sprint is a closer substitute for Nextel than other mobile telephony carriers. **[REDACTED]**[213]

100. Further, the Applicants argue that the diversion ratios between Sprint and Nextel should be relatively small because they are not close substitutes.[214] The Applicants support these arguments with data from Sprint's and Nextel's customer exit surveys,[215] and Wireless Local Number Portability

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[207] That is, Sprint's presence in a market may have been a constraint on Nextel's prices, and Nextel's presence in a market may have been a constraint on Sprint's prices. However, it is not necessary for the products to be the next best substitutes for there to be competitive harm arising from unilateral effects, although it makes the harm more likely. *See* Gregory Werden, *Demand Elasticities in Antitrust Analysis*, 66 Antitrust L.J. 408 (1998).

[208] CRA Analysis at 33-39 ¶¶ 88-106.

[209] **[REDACTED]**

[210] **[REDACTED]**

[211] **[REDACTED]**

[212] *See The New Push Behind P2T*, *Wireless Review*, May 1, 2005.

[213] **[REDACTED]**

[214] CRA Filing at 33-39 ¶¶ 88-106. A diversion ratio is the fraction of sales lost by carrier A that are captured by carrier B (for example, in the event of a price increase by carrier A). If carrier A and carrier B are close substitutes, then we would expect that many customers would switch to carrier B in the event of a price increase by carrier A. The higher the diversion ratio between the merging carriers, the greater is the incentive of the merged firm to raise price. This is due to the fact that as the diversion ratio between the merging parties increases, the amount of sales that would be 'recaptured' by the merged firm, in the event of a price increase for the products and services of either of the merging parties, increases.

[215] The exit surveys were conducted on subscribers when they switched away from Sprint or Nextel. These customers were asked which carrier they were switching to.

("WLNP") data.[216] Using these data sources, the Applicants also claim that both Sprint's and Nextel's customers regard Cingular and Verizon Wireless as the closest substitutes for mobile telephony services.[217] The Applicant's analysis of the WLNP data shows that of the subscribers that left Nextel in 2004, **[REDACTED]** percent switched to Verizon Wireless, **[REDACTED]** percent switched to Cingular-AT&T Wireless, and **[REDACTED]** percent switched to Sprint. Of the subscribers who left Sprint in 2004, **[REDACTED]** percent switched to Verizon Wireless, **[REDACTED]** percent switched to Cingular-AT&T Wireless, and **[REDACTED]** percent switched to Nextel. The Applicants found similar results when analyzing the customer exit survey data, including survey data where customers responded they switched mobile telephony carriers for price reasons.

101. We have also conducted an analysis of the substitutability between Sprint, Nextel and other mobile telephony carriers using WLNP data.[218] We found that the overall pattern of the WLNP data generally indicates that there is significant substitutability among *all* five nationwide carriers. In particular, for the customers who leave a given carrier, at least **[REDACTED]** percent of those customers go to each of the other four national firms. This indicates that a portion of each of the nationwide carriers' customer base views each of the other national carriers as close substitutes. This mutual substitution appears to be present despite product differentiation that exists across the national firms, and indicates that the services provided by the other nationwide carriers may be effective substitutes for those of the Applicants.

102. However, for several reasons we have limited our reliance on the porting data for predicting the likely diversion of customers between Sprint and Nextel if either carrier were to change its offerings.[219] The survey data, which indicate the reasons a subscriber switches to a new carrier, may be

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[216] WLNP was required in the 100 largest markets on November 24, 2003, and required nationwide on May 24, 2004. The WLNP data include each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier. The WLNP data is provided to the Commission by NeuStar, Inc.

[217] We note that this suggests that on a continuum of product characteristics, Cingular Wireless and Verizon Wireless lie between Sprint and Nextel.

[218] Using WLNP data, we were able to gauge movements of customers among the mobile telephony firms, and determine the aggregate customers flows between firms for 2004. This analysis was limited to markets in which all of the nationwide carriers were serving customers. *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21574 ¶ 130.

[219] *See Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21574-575 ¶ 131. The Applicants discuss four limitations to the usefulness of the WLNP data. First, WLNP data involve all switches, not just those that are a response to a price increase. Second, because customers often delay switching until their two-year contracts have expired, the act of switching may substantially lag the decision to switch. Therefore, while it is reasonable to assume that the carrier being ported to is the customer's current first choice provider, it may not be reasonable to assume that the carrier being ported from is any longer the customer's second choice. Third, there are two measures of switching, customers that are porting in and those that are porting out, and there may be substantial differences between the two. Fourth, WLNP data do not identify customers that either decrease wireless usage or drop wireless services. See CRA Analysis at 35-36 ¶¶ 94-97. In addition, we note that the porting data represent a small sample of the population of subscribers. It is not clear whether this sample of the population would be representative of the population as a whole. If the population of subscribers who port their numbers have different preferences on average than the population of subscribers who would likely switch carriers in the event of an adverse change to either Sprint or Nextel's service offerings (*e.g.*, a decrease in service quality), then the porting data would result in misleading estimates of diversion ratios. In addition, any price change or decrease in the numbers of minutes offered by a combined Sprint Nextel would likely affect customers who are not currently customers of either Sprint or Nextel. Current customers would not be affected as much by price changes (although they would be affected by service quality changes), especially those who are currently on contract. When carriers change their prices, they (continued....)

somewhat more useful for predicting the likely diversion of customers between Sprint and Nextel.[220] However, these data also have limitations and therefore, we do not believe that these data should be relied on exclusively to infer the likelihood of adverse unilateral effects. For example, the survey data still suffer from the problem that one cannot infer from the survey results whether or not the carrier that a subscriber is leaving is that subscriber's second choice.

103. Price, as well as non-price attributes, is an important factor for purposes of determining the substitutability among carriers. Therefore, to assess whether consumers could find comparable pricing plans offered by other carriers, we also conducted our own survey of national plans offered by the nationwide carriers. The survey was limited to plans with a price of approximately $40 per month. The prices and other plan features that were surveyed were limited to Internet offerings. This survey found that Nextel offered the smallest bucket of peak minutes of the five national carriers (400 minutes), and that T-Mobile offered the highest (600 minutes). Cingular and Verizon Wireless each offered 450 minutes.[221] Sprint offered 400 minutes. Therefore, it indicates that Nextel's prices may be somewhat more similar to Cingular's and Verizon Wireless's than they are to Sprint's.

104. Finally, there are a number of large regional carriers including ALLTEL, USCC, and Dobson that may provide competitive options to Sprint and Nextel in certain local markets. In particular, we note that ALLTEL has gained coverage and customers since its acquisition of Western Wireless.[222] ALLTEL now covers 33 states and approximately 72 million people.[223] ALLTEL also has an advantageous roaming agreement with Verizon Wireless, which allows it to provide competitive national plans.[224] Therefore, it may serve as an effective substitute to the national firms. In addition, the presence of MVNOs provide further competitive options.

(Continued from previous page)
don't generally change prices for current customers who do not choose to switch plans, although we realize that may not be the case in the future.

[220] The surveys are conducted over a sample of all customers who leave either Sprint or Nextel, and are not restricted to customers who port their numbers. In addition, the customers who leave for price reasons are more likely to be relatively satisfied with their current service, and are more likely to be reacting to price decreases or promotions by other carriers. In most cases, the customers who switch would not be reacting to price increases by their current carrier, as carriers generally do not increase price for current customers, and definitely would not increase price for customers who are on contract. Therefore, the main harm of a price increase by Sprint or Nextel may be to customers who are not currently Sprint or Nextel customers. Thus, the survey data would be useful to predict the risk of adverse unilateral effects only if the population leaving Sprint or Nextel for price reasons have the same distribution of preferences on average as the populations of customers who do not currently subscribe to a mobile plan, who subscribe to one of Sprint or Nextel's rivals and are considering switching, or current Sprint or Nextel customers who would like to switch to another plan or purchase a new phone while remaining with the same carrier.

[221] *See* Cingular Individual Rate Plans, *at* http://onlinestorez.cingular.com/cell-phone-service/wireless-phone-plans/cell-phone-plans.jsp?source=INC230064 (last visited July 28, 2005); Nextel Individual Rate Plans, *at* http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?id4=left_nav;rateplans (last visited July 28, 2005); T-Mobile Individual Rate Plans, *at* http://www.t-mobile.com/plans/Default.asp?tab=national; Sprint PCS Individual Rate Plans, *at* http://www1.sprintpcs.com/explore/servicePlansOptionsV2/FreeClearFairFlexiblePlans.jsp?FOLDER%3C%3Efolder_id=1661521&CURRENT_USER%3C%3EATR_SCID=ECOMM&CURRENT_USER%3C%3EATR_PCode=None&CURRENT_USER%3C%3EATR_cartState=group&bmUID=1122581488597 (last visited July 28, 2005).

[222] *See* Application Transferring Control of Licenses Held by WWC Holding Co., Inc. to Widgeon Acquisition LLC, File No. 0002016468 (filed Jan. 24, 2005) ("Application").

[223] *See ALLTEL-Western Wireless Order*, 2005 WL 1693557 ¶ 11.

[224] Bear Stearns, Equity Research, *U.S. Wireless Services*, June 2005, p. 60. The contract goes through 2010.

105. *Push-to-Talk.* A central feature of Nextel's mobile telephony service is its PTT service, and therefore we analyze whether other mobile telephony carriers' PTT offerings are close substitutes for Nextel's offerings. SAFE Coalition argues that Sprint's ReadyLink service is Nextel's only significant national competitor in integrated dispatch/mobile telephony, and that Verizon Wireless's PTT offering is generally not viewed as a good substitute for Nextel's PTT features for business customers because Verizon Wireless's service has a significantly delayed connect time which renders it unsuitable for the instant communications needed by these customers.[225]

106. We find that Nextel is somewhat differentiated from all of the other national firms mainly by its PTT service, which currently has a strong advantage over all other PTT offerings. Evidence in the record indicates that Nextel is the market leader in terms of PTT subscribers and performance.[226] In addition, Nextel's PTT service is integrated into most of its pricing plans, while other PTT carriers (ALLTEL, Sprint, and Verizon Wireless) price their PTT feature as an additional charge to a customer's mobile telephony plan.[227]

107. We find that Sprint does not currently offer a PTT service that is a close enough substitute for Nextel's offering that the merger of Sprint and Nextel would increase the probability of adverse unilateral harm to PTT customers. It appears that ALLTEL's PTT service may be a relatively close substitute for Nextel's in certain respects, compared to Sprint's and Verizon Wireless's PTT services.[228] Both ALLTEL's and Nextel's in-call latency are **[REDACTED]**, compared to in-call latency of **[REDACTED]** for Sprint and Verizon Wireless. In addition, both Nextel and ALLTEL offer group calling for large groups; a maximum of **[REDACTED]** for Nextel and **[REDACTED]** for ALLTEL, compared to Sprint's maximum group of five. Verizon Wireless does not offer group calling for new customers. In addition, Verizon Wireless's call set-up time used to be the slowest (**[REDACTED]** for Verizon Wireless, **[REDACTED]** for Sprint,[229] **[REDACTED]** for ALLTEL, and **[REDACTED]** for Nextel), although Verizon Wireless's call set-up time may now be faster and comparable to Sprint's since Verizon Wireless re-launched its PTT service in February 2005.[230] We therefore find that Nextel currently has a significant advantage in its push-to-talk service, in part due to its iDEN technology. However, improvements in PTT service which use other mobile telephony technologies may reduce Nextel's advantage in the future. Further, the availability of PTT may become more widespread. For example, USCC has recently introduced its own PTT service.[231] Moreover, additional carriers may begin to offer this service.[232] While Cingular has not announced a PTT service offering, some analysts believe that later this year Cingular may announce that it will offer a PTT service based on the recently adopted

[225] SAFE Petition to Deny, Affadavit of John Komorowski, at 5.

[226] **[REDACTED]**

[227] Nextel offers its Direct Connect service for $0.10 per minute, while ALLTEL offers Touch2Talk at $15 per month national unlimited, Sprint offers Ready Link at $10 per month, and Verizon Wireless offers One-to-One Push to Talk at $1.99 per month. Wireless Review, *The new push behind P2T*, May 1, 2005.

[228] It appears that Sprint offers a slightly closer substitute for Nextel's PTT service than Verizon Wireless.

[229] **[REDACTED]**

[230] **[REDACTED]**

[231] *See* US Cellular SpeedTalk website, *at* http://mrtmag.com/news/intheworks/us_cellular_adds_walkie-talkie_service/ (last visited July 27, 2005); USCC Comments at 11(commenting that its push-to-talk capability was being developed with rollout anticipated in 2005).

[232] Wireless Week, *Battling PTT's Lackluster Performance. Limited handset models, performance issues and Nextel's competitor fervor have kept alternative PTT offerings from living up to expectations*, Vol. 11; Issue 7, March 15, 2005.

Push To Talk Over Cellular (PoC) standard.[233] Therefore, it appears that other carriers may offer further competitive PTT options in the future, supporting our conclusion that risk of adverse unilateral effects is low for PTT.

c. Competitive Responses by Rivals

108. Two factors that may affect the risk of adverse unilateral effects in a differentiated products market are the ability of rival firms to replace competition lost through the merger by repositioning their product offerings (*i.e.*, changing their products or offering new ones similar to those offered by the merged firm) and their ability to absorb new customers if the merged firm raises its prices.[234] As to the second point, rival wireless carriers who lack sufficient spectrum to add numerous subscribers will provide less competitive constraint on the merged firm.[235]

109. In a given market, if a firm is already present and has comparable service coverage to the merged entity, it may be able to reposition in the short run by adjusting its pricing, plan features, handsets, and advertising to become more competitive with the merged firm's products, and thus replace the competition that had existed between the merging firms.[236] In many cases it will be feasible for firms to add customers quickly because excess capacity is often available and because non-trivial increases in the capacity to serve customers can be realized rapidly in established cellular and PCS mobile radio systems. However, there are limits to a carrier's ability to reposition. For example, firms may not be able to quickly expand their operating footprints, purchase additional spectrum if needed, secure tower siting permits, improve overall quality, or deploy a new technology.

110. In addition to carriers' current ability to absorb new customers, expected increases in penetration and usage increase the likelihood that the merged entity's rivals will have the capacity to absorb additional subscribers in the future. Existing operators will often have the capacity to attract customers and increase output should the merged entity attempt to exercise market power to the detriment of consumers.[237] We emphasize that although excess capacity by Sprint Nextel's rivals is a necessary

[233] *See* http://rcrnews.com/news.cms?newsId=23023 (accessed June 16, 2005). In addition, the Open Mobile Alliance held an event in June 2005 in which executives from Cingular participated in a panel discussion on the importance of PoC standardization and their commitment to the new spec. *See OMA announces PoC 1.0 spec*, Telephony Online, June 14, 2005. The PoC standard supports one-to-one and one-to-many PoC sessions and will eventually allow interoperability between PTT services provided by different network operators. *Id.*

[234] *DOJ/FTC Merger Guidelines § 2.212.* We note that capacity is relevant in both differentiated products markets and homogeneous products markets. In the case of differentiated products markets, the firms must not only have the capacity to serve new customers, but must also have the incentive and ability to reposition its product lines in response to a price increase by the merged firm.

[235] Adequate spectrum is a necessary, but not sufficient, condition for the mitigation of potential harm from unilateral effects.

[236] One recent example of repositioning is the evolution of Nextel, moving from a firm solely focused on business workgroup customers, to advertising for (post-paid) residential customers, to launching a pre-paid service, to its current sponsorship of NASCAR.

[237] For example, 10 percent of Sprint and Nextel's combined national subscriber base as of the first quarter of 2005 is only about 21 percent of the total 2004 net adds for carriers other than Sprint and Nextel. In addition, Verizon Wireless, Cingular Wireless, and T-Mobile individually had more net adds in 2004 than 10 percent of Sprint and Nextel's combined national subscriber base as of the first quarter of 2005. Glen Campbell et al., *Global Wireless Matrix 1Q05*, Merrill Lynch, Global Securities Research and Economics Group, June 27, 2005, at 148-149. Further, the amount of advertising expenditures for the five nationwide operators indicates that all of the carriers are vigorously attempting to increase their subscriber base. Therefore, in general carriers are likely to have capacity to absorb additional subscribers. The five nationwide carriers spent a total of $3.9 billion on advertising in 2004, up 9 (continued….)

condition to allow absorption of customers, it is not sufficient to insure that Sprint Nextel's rivals would have the incentive to reposition. At a minimum, however, when a firm is present in a market and has comparable service area coverage, the potential for competitive response is an important factor.

111. The Applicants submitted an analysis which predicts the ability of other carriers to absorb 10 percent of Sprint's and Nextel's subscribers in response to a small but significant and non-transitory price increase by the merged firm. This analysis, which the Applicants refer to as a Subscriber Absorption Capacity (SAC) analysis, estimated the ability of rivals to absorb additional subscribers, given their existing spectrum holdings and technology, in each BTA in the country that was identified using the Commission's initial screen criteria.[238] The Applicants' SAC test indicates that Sprint's and Nextel's rivals would have more than sufficient excess capacity to absorb 10 percent of Sprint's and Nextel's subscribers in all but seven BTAs. The applicants then examined those seven BTAs more closely, and presented evidence indicating that the merger would be unlikely to have adverse competitive effects in any of the BTAs identified by their initial screen.[239] We agree that the Applicants' SAC study provides some evidence that the risk of adverse unilateral effects is low.[240]

112. This conclusion is consistent with our finding in the *Cingular-AT&T Wireless Order*.[241] As part of our investigation of the Cingular-AT&T Wireless merger, we performed an analysis of the capacity of other firms to absorb subscribers who would prefer to change carriers in response to an attempted exercise of market power by the merged firm. The results of our study indicated that, for most of those markets caught by the initial screen, Cingular and AT&T Wireless's rivals collectively possessed the capability to respond to a unilateral price increase by absorbing at least 10 percent of the combined entity's market share.[242]

113. As the merger of Cingular and AT&T Wireless occurred so recently, we believe that our finding in the *Cingular-AT&T Wireless Order* provides evidence that is relevant in this instance.[243] The level of Sprint's and Nextel's spectrum aggregation in almost all markets will be lower than the amount of spectrum held by Cingular and AT&T Wireless.[244] Therefore, the amount of spectrum held by Sprint's and Nextel's rivals will be generally greater than the amount that was held by Cingular's and AT&T Wireless's rivals. In addition, the number of the combined Sprint-Nextel subscribers will generally be lower than the number of the combined Cingular-AT&T Wireless subscribers. Thus, we believe that our finding in the *Cingular-AT&T Wireless Order* provides some evidence that in most markets it is likely that Sprint and Nextel's rivals will have the capacity to absorb significant numbers of customers.

114. We have also examined the percent of population covered and the percent of land covered for each carrier in each market in which we believed that the proposed merger of Sprint and

(Continued from previous page)
percent from 2003, and up 24 percent from 2002. *See* Simon Flannery, et al., *Wireless Carrier Advertising Remains Intense*, Morgan Stanley, Equity Research, May 18, 2005, at 2.

238 CRA Analysis at 42-47 ¶¶ 113-126; *see also Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584 ¶¶ 95-112.

239 We also examine these seven BTAs as part of our market-specific review in Appendix C.

240 None of the petitions to deny or comments challenged this study.

241 *Cingular-AT&T Wireless Order*, 19 FCC Rcd. at 21584 ¶ 136.

242 *Id.*

243 Although the relevant markets in this instance may differ from the markets analyzed in the Cingular-AT&T Wireless Order, we believe that the results provide some evidence supporting the conclusion that Sprint's and Nextel's rivals may have the capacity to absorb subscribers.

244 Sprint and Nextel will have more than 60 MHz in only one market, and in most markets they will hold well below that amount. CRA Filing, at 28. Sprint and Nextel will have 67.5 MHz of spectrum in Honolulu, HI.

Nextel would pose some risk of adverse unilateral effects.[245] We found in all the relevant markets that the numbers of carriers with adequate population and land coverage significantly lowered the risk of adverse unilateral effects as a result of this transaction. We believe that a combination of the analysis discussed in the *Cingular-AT&T Wireless Order*, our analysis of population and land coverage, and the study submitted by the Applicants, allows us to conclude that Sprint's and Nextel's rivals likely will have the ability to absorb customers and thwart an attempted exercise of market power by Sprint Nextel.

d. Marginal Cost Reductions

115. The Applicants claim that the Sprint-Nextel merger will create substantial synergies, including efficiencies that will lead to pressure to reduce wireless prices. They claim that certain cost reductions would create incentives for the merged firm to reduce its price in order to sell more output. We find that the merger is likely to result in marginal cost reductions.[246] Marginal cost is the increment, or addition to costs that results from producing one more unit of output.[247] Marginal cost reductions may reduce the merged firm's incentive to elevate price, and thus are relevant to our analysis of unilateral effects.[248] We find that the likelihood of marginal cost reductions further supports our conclusion that the risk of adverse unilateral effects is low.[249]

e. Conclusion

116. In conclusion, we find that this transaction does not pose a risk of harm from unilateral effects. We find on balance that there are several mobile telephony services that can serve as good substitutes for the services of Sprint and Nextel. Therefore, although we find that some consumers may view Sprint and Nextel to be good substitutes, the availability of several equally attractive options significantly reduces the risk of adverse unilateral effects. We have examined market shares, and the number of carriers with substantial coverage in the geographic markets identified by the initial screen. This analysis, in conjunction with our finding that marginal cost reductions may reduce the merged firm's incentive to elevate price, indicates that adverse unilateral actions by Sprint Nextel are unlikely. In addition, the Applicants' SAC analysis indicates that Sprint Nextel's rivals will have capacity to absorb subscribers, and thus supports our finding that adverse unilateral action on the part of Sprint Nextel is unlikely. Further, we find that Sprint's PTT service is not currently a close substitute for Nextel's PTT service and that there are likely to be additional competitive PTT offerings in the future, suggesting there is little risk of adverse unilateral harm to customers interested in PTT.

5. Market-by-Market Evaluation

117. In this section, we build on our general analyses of likely competitive effects by undertaking a more granular analysis of local markets. That is, we have found, based on conditions that are common across U.S. markets (such as technological heterogeneity) and on typical conditions prevailing in most local markets (such as number of firms and market shares) that both collusive behavior and adverse unilateral effects are unlikely. Here, we consider individual markets to determine whether conditions are such that localized harm from the merger would be likely. While all local areas are scrutinized, among those to which we pay particular attention are the areas initially identified as of potential concern by the Applicants' SAC analysis.

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[245] *See supra* Section V.B.2.b.ii.

[246] Marginal costs that will potentially be reduced include costs for backhaul traffic, costs for IT, billing, customer care, sales, marketing costs, and roaming expenses.

[247] Carlton, Dennis W. and Jeffrey M. Perloff, *Modern Industrial Organization*, third edition, 2000, p.29.

[248] *See Merger Guidelines § 4.*

[249] These cost reductions are discussed in depth in the Public Interest Benefits section. *See infra* Section V.A.7.

118. In undertaking this market-by-market analysis, we consider variables that the general analyses indicate are important for predicting the incentive and ability of carriers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output. These include: the total number of rival carriers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the merger; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival carriers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market. Thus, for example, if our count of the number of rival carriers and our scrutiny of their network coverage in a specific market indicate that the response of rival carriers will likely be sufficient to limit the ability and incentive of the combined entity to raise price, we find that the transaction will not cause unilateral harm to competition even in the presence of a relatively high post-transaction market share for the combined entity. We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we find that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in the majority of the market.

119. Based on our examination of these variables and the interaction among them, we find that there are no markets in which the transaction is likely to result in competitive harm. First, we find that competitive harm is unlikely in each CEA in which there will be four or more competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide service plans.[250] This finding applies to the bulk of the CEAs flagged for further review by the initial screen, including all the largest CEAs caught by the screen. Second, at the other extreme, we find that there are no CEAs in which the merger would reduce the number of competitors to two or fewer, a merger consequence that we would view as presenting a likelihood of competitive harm. Third, regarding all remaining markets, those not falling into either of the categories above, we find that competitive harm is unlikely as well. In many of these markets, post-merger there will be a reduction from four to three in the number of firms fully built out and able to offer national pricing plans. However, there are other factors that reduce the risk of harm. In many CEAs, for example, there are one or more other firms offering competitive nationwide service that have a significant—but not fully built-out—presence. We find that firms in this situation have a realistic ability to expand their presence and be effective competitive constraints in these markets. In all other cases, there are one or more regional firms that are extensively built out and have achieved significant market share; these firms, combined with the merged entity, other competitors with nationwide service plans, and circumstances relevant to each specific market, results in the merger not likely resulting in competitive harm. We find that these strong regional firms are closely comparable alternatives for many consumers in these markets. And it is not the case for any of these markets that the merged firm's market share would be so high as to indicate likely competitive harm.

120. Finally, while we reach no firm conclusions about the efficacy of the Applicants' SAC analysis as an identifier of potentially anticompetitive markets, we have, out of an abundance of caution, evaluated those local markets that the SAC analysis flagged. As discussed in detail in Appendix C, we find that competitive harm is unlikely there.

121. As a part of our market-by-market analysis, we have verified that where we find that a

[250] We do not find here that any hypothetical five to four consolidation would be competitively innocuous. Rather, we find this is so only for the actual situations that arise as a result of this transaction, based on our review of the other relevant circumstances such as the merged entity's market share.

firm is likely to be an effective competitive constraint, it in fact has sufficient bandwidth to enable it to play that role. We recognize that the nationwide firms other than the Applicants have 20 megahertz or less of spectrum available in some major markets. This is most often true of T-Mobile. However, in all but the largest markets 20 megahertz, or even less, may be adequate in the near term. Moreover, to the extent that T-Mobile—or any other firm—competing with the merged entity might be spectrum constrained as growth occurs, we note that we plan to make Advanced Wireless Services spectrum available at auction as early as June 2006.[251] This constitutes 90 megahertz of capacity, nationwide.

122. The absence of any local markets in which competitive harm would be expected as a result of the merger appears to reflect the fact that Sprint and Nextel have typically been the third, fourth, or later entrants to a local market. Sprint and Nextel were not among the early A and B block cellular providers when mobile telephony was licensed on a duopoly basis with only two licenses per market. Rather, we find that in markets where Sprint and Nextel are both substantially built out, there are at least two other providers with a significant presence (the original A and B block cellular providers or their successors-in-interest), and often more than two other providers are present. Similarly, while there are markets in which Sprint has attained a leading market share and other markets in which Nextel has attained a leading market share, there are no local markets in which both of the Applicants have the dominant market shares that would suggest adverse competitive harm is likely.

6. Roaming

123. In this section, we consider the potential vertical or other non-horizontal harms of the proposed transaction in the mobile telephony market. The only issue of this type on the record or that we identify in our independent analysis are the possible impacts of the proposed transaction on roaming in this market.

124. In the Application, Sprint and Nextel address the impact of the merger on the availability of automatic roaming services. Sprint and Nextel state that the merged entity "do[es] not expect to terminate any existing roaming agreements as a result of the merger."[252] Sprint currently has over 90 domestic, and over 40 international, roaming agreements.[253] Although it expects that, "as a result of the expanded geographic coverage of its CDMA network, the merged company will avoid some roaming charges that Sprint currently incurs," Sprint states that "there is no list of markets for which the merged firm would not need roaming agreements" after the merger.[254] In addition, some of Sprint's roaming partners filed comments in support of the merger. They claim that their roaming relationship with Sprint has brought access to technology and resources, which helps to provide complete wireless coverage to rural areas.[255]

125. A number of other commenters and one petitioner have either requested that the Commission impose a condition requiring the merged entity to enter into reasonable, non-discriminatory, roaming agreements,[256] or declare a national policy requiring large nationwide carriers to enter into

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[251] Letter from Michael K. Powell, Chairman, FCC to Michael D. Gallagher, Assistant Secretary for Communications and Information, U.S. Department of Commerce, dated December 29, 2004.

[252] **[REDACTED]**

[253] Sprint and Nextel Joint Opposition to Petition to Deny and Reply to Comments at 9.

[254] *Id.*

[255] They also contend that the proposed merger will benefit industry and customers through greater technological innovation. Nex-Tech Wireless Comments at 1, 2; Pioneer Comments at 1; United Wireless Corporation Comments at 1.

[256] New Jersey Division of the Ratepayer Advocate filed a pleading entitled "Petition to Deny" in which it argues that the proposed merger poses significant adverse effects upon all wireless services customers. Ratepayer (continued….)

reasonable, reciprocal, roaming agreements.[257] For instance, one of Nextel's domestic roaming partners, SouthernLINC Wireless, contends that a condition requiring the merged entity to enter into roaming agreements is necessary because it has encountered great difficulty in trying to negotiate a reasonable roaming agreement with Nextel or its affiliate, Nextel Partners. Specifically, SouthernLINC Wireless contends that: Nextel has refused to interconnect its subscribers for PTT and dispatch, while providing interconnection for these services to Nextel Partners' subscribers; Nextel charges SouthernLINC Wireless roaming rates that are much higher than the rates other carriers pay; and Nextel Partners has refused to enter into roaming agreements with SouthernLINC Wireless.[258] Sprint and Nextel believe that these requests should be addressed in a rulemaking proceeding on roaming rather than in this license transfer proceeding.[259]

126. We find that the roaming issues raised by these parties do not raise substantial and material questions of fact regarding the proposed merger before us. Although this merger would reduce the number of nationwide carriers, it is not likely to result in anticompetitive effects regarding roaming services because it will not reduce the number of iDEN or CDMA nationwide roaming partners for smaller, rural, and/or regional providers. Since the bargaining positions of smaller providers who use either iDEN or CDMA networks and who want to enter into roaming agreements with Nextel or Sprint, would be the same post-merger as they were before the merger, the reduction in the number of nationwide carriers does not create merger-specific competitive harm in the market for roaming services.

127. We are concerned, however, about the general difficulties that smaller, rural, wireless providers are facing in trying to negotiate automatic roaming agreements with nationwide carriers.[260] RCA and USCC, for example, contend that rural customers are at risk of not having the technical ability to roam on the merged entity's network.[261] Our manual roaming rule requires other carriers to complete calls initiated by Sprint Nextel's customers where Sprint Nextel cannot because it has neither its own

(Continued from previous page)
Advocate Petition to Deny at 2. In its Reply to Sprint and Nextel's Joint Opposition to the Petitions to Deny, New Jersey Division of the Ratepayer Advocate further contends that the merged entity will have the market power to refuse to enter into roaming agreements with small carriers. Ratepayer Advocate Reply at 4. Therefore, it urges the Commission to condition approval of the merger on Sprint and Nextel fully explaining their plans for developing roaming agreements with fair and reasonable rates and conditions. *Id.* at 4. As an initial matter, New Jersey Division of the Ratepayer Advocate has not complied with the statutory requirements for the filing of a petition to deny because it has not attached an affidavit as required under Section 309(d) of the Communications Act. *See* 47 U.S.C. 309(d)(1). In any event, to the extent the New Jersey Division of the Ratepayer Advocate's filing can be considered a petition to deny, we reject it as not raising substantial and material questions of fact for the reasons set forth in this section on roaming. NY3G Partnership, an MMDS licensee, filed a petition to deny in which it contends that, if the Commission otherwise finds the proposed merger in the public interest, then the Commission should impose conditions on the merged entity that would require the merged entity to engage in good faith negotiations towards entering into automatic roaming agreements with other BRS/EBS providers. NY3G Partnership Comments at 3. We address NY3G's petition *infra* Section V.B.1.a.

[257] USCC and Rural Cellular Association ("RCA") urge the Commission to use this merger review proceeding to adopt policies requiring large nationwide carriers to enter into reasonable, reciprocal, roaming agreements with small, mid-size, regional carriers. USCC Comments at 1, 2, 5; RCA Comments at 2-5. They also argue that a policy is needed to support interoperability between the networks of national and regional carriers for data-based services including Push-To-Talk. USCC Comments at 11-12.

[258] SouthernLINC Wireless Reply Comments at 1, 6, 8.

[259] Joint Opposition at 11-12.

[260] USCC Comments at 1, 2, 5; RCA Comments at 2-5.

[261] RCA Comments at 3-4; USCC Comments at 2.

signal nor an automatic roaming agreement.[262] To address the potential harm identified by RCA and USCC and to ensure compliance with the manual roaming requirement, we adopt as a condition to our grant in this Order a reciprocal duty, *i.e.*, that Sprint Nextel may not prevent its customers from reaching another carrier and completing their calls in these circumstances, unless specifically requested to do so by a subscriber. We also note that if a roaming partner believes that Sprint Nextel is charging unreasonable roaming rates, it can always file a complaint with the Commission under section 208 of the Communications Act.[263]

128. We recognize that the manual roaming requirement and the ability to file a section 208 complaint may not fully address the concerns raised by the commenters. However, given the broad scope of the concerns raised – many of which seem to call for a reevaluation of the Commission's roaming rules and policies – they are more appropriately addressed in the context of a rulemaking proceeding. As we stated in the *ALLTEL-Western Wireless Order*, the Commission plans to initiate a proceeding to examine whether our rules regarding the roaming requirements applicable to CMRS providers should be modified to take into account current market conditions and developments in technology. This proceeding will afford interested parties an opportunity to comment on a variety of roaming issues, including manual and automatic roaming, technical considerations, and small and rural carrier roaming issues.[264]

7. Potential Public Interest Benefits

129. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[265] Under Commission precedent, however, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential public interest harms.[266] In addition to assessing the potential competitive harms of the proposed transaction, we also consider whether the combination of these companies' wireless operations is likely to generate verifiable, merger-specific, public interest benefits.[267] We examine whether operation of the combined entity could yield consumer benefits unattainable absent a merger. For the reasons discussed below, we have determined that the Applicants' proposed transaction will likely result in some merger-specific public interest benefits. We reach this result knowing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to quantify the magnitude of these benefits or the time horizon in which these benefits will be realized.[268]

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[262] *See* 47 C.F.R. § 20.12; *see also ALLTEL-Western Wireless* Order, 2005 WL 1693557 ¶ 108; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

[263] 47 U.S.C. § 208. *See also Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21592 ¶ 182.

[264] *See ALLTEL-Western Wireless Order*, 2005 WL 1693557, ¶¶ 108-109.

[265] *See EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 188; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control, 12 FCC Rcd 19885, 20063 ¶ 158 (1997) ("*Bell Atlantic-NYNEX Order*"); *see also DOJ/FTC Merger Guidelines* § 4.

[266] *See, e.g., EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 188; *see also Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20063 ¶ 157; Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer of Control, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 256 (1999) ("*SBC-Ameritech Order*").

[267] *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14130 ¶ 209; *SBC/Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255; *WorldCom/MCI Order*, 13 FCC Rcd at 18134-35 ¶ 194.

[268] The Applicants claim that the proposed merger will result in total net synergies of approximately $12.1 billion on an after tax, net present value basis. Application, Public Interest Statement at 32. **[REDACTED]**

130. The Commission applies several criteria to decide whether a purported merger benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit "must be likely to be accomplished as a result of the merger, but unlikely to be realized by other means that entail fewer anticompetitive effects."[269] Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit.[270] In addition, as the Commission has noted, "the magnitude of benefits must be calculated net of the cost of achieving them."[271] Furthermore, speculative benefits that cannot be verified will be discounted or dismissed. Thus, as the Commission explained in the *EchoStar-DirecTV Order*, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present."[272] Third, the Commission also stated that it "will more likely find marginal cost reductions to be cognizable than reductions in fixed cost."[273] In general, reductions in marginal costs are more likely than reductions in fixed costs to result in lower prices for consumers.[274]

131. Based on these factors, we find that this transaction could lead to efficiencies that result in reduced prices for consumers and/or increased coverage, improved service quality, and more extensive advanced service offerings. These merger-specific cost savings and cost avoidance may be achieved in a variety of ways, including elimination of redundant cell sites,[275] reduced reliance on outside networks for backhaul operations,[276] and avoidance of cost duplication in the development and deployment of new technologies.[277] We also find that the larger size of the Sprint Nextel entity will likely create opportunities to obtain quantity discounts from network equipment and handset suppliers.[278] Additional

[269] *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 189; *see also Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 158 ("Pro-competitive efficiencies include only those efficiencies that are merger-specific, *i.e.*, that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger."); *SBC-Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255 ("Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger ...."); *Comcast-AT&T Order*, 17 FCC Rcd. 23246, 23313 ¶ 173 (Commission considers whether benefits are "merger-specific"). *Cf. DOJ/FTC Merger Guidelines* § 4.

[270] *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 190; *see also Bell Atlantic-NYNEX Order*, 12 FCC Rcd. at 20063 ¶ 157 ("These pro-competitive benefits include any efficiencies arising from the transaction if such efficiencies ... are sufficiently likely and verifiable ...."); *AT&T-Comcast Order*, 17 FCC Rcd at 23313 ¶ 173 (Commission considers whether benefits are "verifiable"); *SBC-Ameritech Order*, 14 FCC Rcd at 14825 ¶ 255; *DOJ/FTC Merger Guidelines* § 4 ("[T]he merging firms must substantiate efficiency claims so that the Agency can verify by reasonable means the likelihood and magnitude of each asserted efficiency, how and when each would be achieved (and any costs of doing so), [and] how each would enhance the merged firm's ability to compete ....").

[271] *EchoStar-DirecTV Order*, 17 FCC Rcd at 20630 ¶ 190.

[272] *Id.*

[273] *Id.*; *see also DOJ/FTC Merger Guidelines* § 4.

[274] *See EchoStar-DirecTV Order*, 17 FCC Rcd. at 20630 ¶ 191; *see also DOJ/FTC Merger Guidelines* § 4.

[275] Application, Public Interest Statement at 7.

[276] *Id.* at 7, 39.

[277] *Id.* at 34.

[278] *Id.* at 7.

savings may be realized through an efficient combination of the development and operation of the billing, sales, and marketing functions of each of the separate entities after the merger.[279] Finally, we find that the proposed acquisition may result in greater intermodal competition between mobile wireless and wireline mass market services.[280]

a. Service Quality and Coverage

132. We find that current and future Sprint and Nextel subscribers will likely receive improved service quality as a result of the coordinated improvements to the CDMA and iDEN networks.[281] Applicants plan to consolidate cell sites, add CDMA infrastructure to existing iDEN cell sites, and increase the number of iDEN cell cites.[282] This will likely reduce dropped and blocked calls for current Sprint and Nextel customers.[283]

133. The extent of potential service enhancements will depend on the cell site locations, their proximity to each other, as well as the physical and commercial attributes of the cell sites. The Applicants will have access to over 43,000 cell sites nationwide operating in the 800 MHz, 900 MHz, and 1.9 GHz bands located in over 350 MSAs.[284] Furthermore, Sprint estimates that it will build **[REDACTED]** new CDMA cell sites and incorporate **[REDACTED]** CDMA cell sites into Nextel iDEN cell sites by the end of 2008.[285] Of these **[REDACTED]** cell sites, Sprint estimates that it will consolidate **[REDACTED]** current CDMA cell sites with Nextel sites and incorporate **[REDACTED]** new cell sites with existing or newly built iDEN cell sites.[286] We find that successful implementation of these plans should result in improved service for existing Sprint and Nextel customers. Subscribers to both networks should benefit as cell site optimization leads to fewer coverage holes, improved building penetration, better audio quality and fewer dropped calls.[287]

b. Next Generation Service

134. We also find that the Applicants' plan for the merged entity to implement its 3G technology, known as1xEV-DO, over much of its current network, and ultimately upgrade the entire combined Sprint Nextel network to 1xEV-DO Revision A, should create merger-specific benefits. Prior to the merger, Nextel had not selected a technology to bring next generation services to its subscribers. As a consequence of the merger, Nextel subscribers may be able to benefit from the next generation

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[279] *Id.* at 35.

[280] *Id.* at 28-31.

[281] Nextel reports that more than one-third of the former customers that it surveyed indicated that they dropped Nextel service because of network performance issues, including dropped calls, coverage holes, in-building coverage, system outages, and lack of expanded coverage. Similarly, Sprint reports that approximately 36 percent of the former customers it surveyed cited network performance as a main reason for seeking an alternative service provider. CRA Analysis at 11 ¶ 27.

[282] Public Interest Statement at 6 and 37. Valente and West Decl. at ¶¶ 34-36, 52, and 53. **[REDACTED]**

[283] *Id.*

[284] Valente and West Decl. at ¶¶ 35-36. Of the 43,000 cell sites, Sprint now holds 24,000 and Nextel holds 19,700. *Id.*

[285] **[REDACTED]**

[286] **[REDACTED]**

[287] Valente and West Decl. at ¶ 52.

services that Sprint asserts that it will provide.[288] By the end of 2006, Sprint claims that the technology will be available to the vast majority of its licensed markets.[289] The Applicants assert that post-merger they will follow this deployment with the 1xEV-DO Revision A upgrade throughout their network.[290] By early 2008, Sprint plans to complete the deployment of 1xEV-DO Revision A, which may enable high performance push-to-talk capabilities and peak downlink data rates of 3.1 Mbps with an anticipated average rate of 400 to 600 kbps.[291] Expected user average uplink data rates range from 300 to 500 kbps.[292]

135. Sprint Nextel will initially operate three radio access networks: iDEN and two CDMA variations – 1xRTT and 1xEV-DO.[293] In order to provide access to broader services, the Applicants represent that they will investigate a multi-mode, multi-band handset that will support 1xRTT voice and data, 1xEV-DO data, and iDEN.[294] In addition, the parties plan to deploy gateways to achieve interoperability between the CDMA and the iDEN networks.[295]

136. If the Applicants implement the above measures and are able to overcome any integration challenges,[296] iDEN subscribers should benefit from faster data rates and interoperability between CDMA and iDEN push-to-talk capabilities. Sprint subscribers can expect to benefit from faster access to the enhanced capabilities of the 1xEV-DO Revision A network, including a significantly improved push-to-talk feature. Furthermore, should a multi-mode, multi-band handset become available, Sprint Nextel subscribers may have access to a broader array of network resources.

c. Economies of Scale and Operating Synergies

137. It is also likely that the transaction will result in scale economies and operating synergies that would not otherwise be available to the Applicants if each entity continued separate operations. Although it is difficult to verify the Applicants' dollar value estimates, there is ample evidence in the public domain that enables us to set reasonable bounds on the capital investment required for a wireless carrier to deploy a next generation network, a capital expense that Nextel will be able to avoid. In addition, we believe that it is likely that the Applicants will likely reap significant savings by merging their billing, customer care, sales, and marketing systems.

138. We find it plausible that Sprint Nextel will be able to improve the quality of CDMA

[288] Application, Public Interest Statement at 26-27. Specifically, in June 2004, Sprint announced adoption of CDMA 1xEV-DO as a 3G platform to enhance PCS Vision networks' data rate and capacity. Sprint represents that it will make the service available to 129 million people in 39 major markets this year. *Id.*

[289] *Id.*

[290] *Id.*

[291] *Id.*

[292] *Id.* Sprint also states that the 1x EV-DO Revision A wireless modem card provides (downlink) data rates of 300 to 500 kbps with peak data bursts of up to 2450 kbps. In contrast, the 1xRTT network provides an average data rate of 50 to 70 kbps with peak bursts of 144 kbps. *See* Valente and West Decl. Attachment 1 at ¶ 9.

[293] Valente and West Decl. at ¶¶ 8, 33.

[294] Valente and West Decl. at ¶ 45. Nextel has begun a dual-mode, iDEN and CDMA, phone development effort. **[REDACTED]**

[295] Application, Public Interest Statement at 25. Nextel states that it has developed an IP gateway that will facilitate interoperability between iDEN and other PTT technologies. *See* Valente and West Decl. Attachment 2 at ¶ 11.

[296] Nextel expects that the greatest challenge will be to support dual-mode handsets due to implementation differences between GSM and CDMA networks. **[REDACTED]**